

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1605 of 2016

IN

Civil Writ Jurisdiction Case No. 9169 of 2016

- =====
1. The Union of India through the Divisional Railway Manager, Eastern Railway, Malda, District - Malda.
 2. Divisional Railway Manager, Eastern Railway, Malda Divisional, Malda.
 3. Senior Divisional Commercial Manager, Eastern Railway, D.R.M. Building, P.O. - Jhaljhalia, District - Malda.
 4. Chief Commercial, Manager (P.M.), Eastern Railway, Kolkata (W.B.).
 5. Commercial Control Incharge, Malda, Division Eastern Railway, Malda.

.... Respondents-Appellant/s

Versus

Bhagwan Yadav, son of Late Dashrath Yadav, resident of Mohalla - Dixon Road, Mundichak, P.S. - Tilka Manjhi, District - Bhagalpur.

.... Respondent/s

With

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Letters Patent Appeal No. 1826 of 2016

IN

Civil Writ Jurisdiction Case No. 9169 of 2016

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Bhagwan Yadav, son of Late Dashrath Yadav, resident of Mohalla - Dixon Road, Mundichak, P.S. - Tilka Manjhi, District - Bhagalpur.

.... Appellant/s

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4. Chief Commercial, Manager (P.M.), Eastern Railway, Kolkata (W.B.).
5. Commercial Control Incharge, Malda, Division Eastern Railway, Malda.

.... Respondent/s

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Appearance :

(In LPA No.1605 of 2016)

For the Appellant/s : Mr. D. K. Sinha, Senior Advocate
Mr. Satyeshwar Prasad, Advocate

For the Respondent/s : Mr. Rajendra Narayan Senior Advocate
Mr. Dr. Manoj Kumar, Advocate

(In LPA No.1826 of 2016)

For the Appellant/s : Mr. Rajendra Narayan, Senior Advocate
Mr. Dr. Manoj Kumar, Advocate

For the Respondent/s : Mr. D. K. Sinha, Senior Advocate
Mr. Satyeshwar Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-07-2017

In both these appeals, challenge made is to a common order dated 12.07.2016 passed by the Writ Court in Civil Writ Jurisdiction Case No.9169 of 2016, it is proposed to dispose of both the matters by this common order.

The authority of Eastern Railway, Malda, issued an advertisement for a grant of annual maintenance contract for maintenance of computer peripheral equipments, except networking equipments, at various locations within Malda Division. A letter of acceptance was issued to the contractor namely, the original petitioner in the writ petition, and one of the conditions in the letter of acceptance was that he has to deposit the performance guarantee within a reasonable period. When the performance guarantee was not deposited within the period stipulated, entire contract was terminated after notice and challenging the order of termination of contract, the writ petition was filed.

It was the case of the petitioner that the petitioner fell ill and, therefore, within the period stipulated in the acceptance letter dated 14.12.2015, he could not deposit the performance guarantee.



Finding this to be not a justifiable reason in condoning the default, the learned Writ Court found that there is no error in terminating the contract and refused to interfere into the matter. However, while doing so, the learned Writ Court directed that the Railway should refund the earnest money and security amount deposited.

Challenging the dismissal of his writ petition, except grant of relief of earnest money and security deposit, the original petitioner Bhagwan Yadav has filed Letters Patent Appeal No.1826 of 2016 and challenging the order of the Writ Court so far as it directs for refund of security amount and earnest money, Letters Patent Appeal No.1605 of 2016 is filed by the Railway Administration.

Learned counsel for the original petitioner Bhagwan Yadav argued that once the contract was awarded to the petitioner and there was reasonable ground for not complying with the stipulation contained in the acceptance letter, the learned Writ Court should have considered this aspect of the matter and interfered with the order of termination of contract.

We are unable to accept the aforesaid contention. The letter of acceptance clearly indicates that on fulfilling certain conditions with regard to deposit of performance guarantee within a stipulated period, the regular agreement to the contract would be executed. Admittedly, due to various reasons, pertaining to ailment of the



petitioner, the petitioner could not and did not abide by the conditions stipulated in the letter of acceptance, as a consequence thereof, the agreement itself was not executed and the entire contract terminated. Once it is an admitted position that the petitioner did not perform the conditions stipulated in the letter of acceptance, even if the petitioner has justifiable cause for not doing so, no direction of mandamus can be issued in a proceeding under Article 226 of the Constitution of India in the matter of directing the respondents to accept the performance guarantee even after the period stipulated and enter into an agreement. This is being beyond the jurisdiction of a writ Court exercising jurisdiction under Article 226 of the Constitution of India; we are of the considered view that the Writ Court has not committed any error in rejecting the petition.

To that extent, the Letters Patent Appeal No.1826 of 2016 filed by Bhagwan Yadav arising out of the writ petition being CWJC No.9169 of 2016 is liable to be rejected as the learned Writ Court has not committed any error in rejecting his claim.

As far as the directions issued by the learned Writ Court to refund the security amount and earnest money are concerned, once there has been stipulation in the contract itself that in the absence of submission of performance guarantee, the contract would be terminated and amount forfeited, the learned Writ Court on sympathetic



consideration could not have held the action to be wholly unjustified. This was also beyond the jurisdiction of the learned Writ Court once it was found that the termination of contract was proper.

In view of the above, Letters Patent Appeal No.1605 of 2016 filed by the Railway Administration is allowed. The order passed by the learned Writ Court so far as it directs refund of earnest money and security/ performance guarantee is quashed.

Parties are granted liberty to take recourse to the common law remedy in case they have any grievance in the matter.

With the aforesaid, both the appeals stand disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	

